IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9554 of 1992

with

CIVIL APPLICATION No 12093 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALUKA DEVELOPMENT OFFICER

Versus

NANABHAI K VANKAR

Appearance:

1. Special Civil Application No. 9554 of 1992

MR HS MUNSHAW for Petitioner No. 1-2

MR KS ACHARYA for Respondent No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 05/03/2004

ORAL JUDGEMENT

This petition is filed by Taluka Development

Officer and District Development Officer under Article 226 of the Constitution of India challenging the judgement and award passed by the Labour Court, Godhra in Reference (LCG) No.319 of 1990 whereby the present respondent was ordered to be reinstated with full backwages and continuity of service.

2. It is the case of the petitioners that during the period from 1985-86 to 1987-88, Sahera Taluka Panchayat of Panchmahal District was badly hit scarcity area and scarcity relief works were being operated by the concerned District Panchayat as per directions of the State of Gujarat. It is further stated that number of temporary daily wage labourers were provided work and temporary work-charge Clerks were also appointed during these years only for scarcity relief works. It is also stated that the respondent was appointed twice on 25.3.1988 and 23.5.1988, without following the due procedure of recruitment. The respondent has worked from 25.3.1988 to 4.5.1988 and then from 23.5.1988 to 28.7.1988. It was further stated that since there was very good rainfall in July, 1988, it was decided to stop the said scarcity relief works and hence, as per the directions of the higher authorities, the scarcity relief works were stopped and the respondent was relieved w.e.f. 18.7.1988.

3. Being aggrieved by the said order dated 18.7.1988, the respondent has approached to the Labour Commissioner, Godhra under the provisions of the Industrial Disputes Act who ultimately referred the matter to the Labour Court, Godhra through his order dated 21.1.1989 and the same was registered as Reference bearing (LCG) No.319 of 1990. The petitioner Panchayat has filed two replies before the Labour Court, Godhra opposing the reference filed by the respondent. Despite these replies, the Labour Court has passed an award on 30.5.1992 which is under challenge in the present petition.

4. Mr.H.S.Munshaw, Ld. Advocate appearing for the petitioners submits that the Labour Court has committed a grave error of law as well as facts by passing the impugned award with regard to reinstatement of the respondent with continuity of service and back wages. No affidavit was filed by the respondent before the Labour Court. The Labour Court has not considered the replies which were filed by the petitioners before the Labour Court. On the contrary, it was observed by the Labour Court that there was no evidence and the claim made by the respondent has gone unchallenged. Mr.Munshaw has

further submitted that no evidence was produced by the workman to show his joining date and how he has completed 240 days as temporary work-charge clerk with the petitioner. The Labour Court has also failed to consider the fact that the respondent was employed as temporary daily wager without following the process of the recruitment as due to the scarcity relief work, the respondent was employed and in completion of the scarcity relief works as a result of good monsoon, there was no work nor there were funds with the petitioner and hence, all the work-charge clerks including the respondent herein were relieved.

5. Mr.Munshaw, Ld. Advocate for the petitioner has further submitted that whether scarcity relief work is an industry or not is decided by this Court way back in the year 1989. For this purpose, he relies on the decision of this Court in the case of J.J.Shrimali Vs. District Development Officer, Mehsana and others reported in 1989(2) GLH 12 wherein it is held that where on account of famine and drought conditions scarcity relief works are undertaken and some persons are employed on express understanding that their appointments were absolutely temporary and on an ad hoc basis, termination of services of such persons does not amount to retrenchment and they are not entitled to wages for notice period and compensation.

6. Mr.Munshaw has further relief on the Full Bench decision of this Court in the case of H.K.Makwana Vs. State of Gujarat & Others reported in 35(2) GLR 1002 wherein agreeing with the decision rendered in the case of J.J.Shrimali (Supra), the Full Bench has taken the view that the said decision does not call for any re-consideration. The employment offered to the persons on the scarcity relief works as undertaken by the State cannot be said to be employment in "Industry" as defined by Sec. 2(j) of the Industrial Disputes Act, 1947 mainly because,

a. It is the primary and inalienable function of the State to provide livelihood to the persons who are affected by the natural calamities such as famine, earthquake, epidemic, flood, scarcity, etc. and

b. admittedly, the relief work is not a "business" or "trade" and with regard to the "undertaking", the activity is not analogous to trade or business or that it is not a systematic activity but is carried out casually at different places

depending on the calamities in a particular area.

7. Based on the aforesaid two judgments, Mr.Munshaw has submitted that since the relief activity undertaken by the petitioners doe not fall within the definition of industry, the very argument which was made before the Labour Court was not sustainable and any decision rendered by the Labour Court, in contravention of these two judgments, is illegal and not tenable at law and hence deserves to be quashed and set aside.

8. Mr.G.K.Rathod, Learned Advocate appearing for the respondent submits that the petition itself is not maintainable as the petitioners have got an alternative remedy challenging the above order of the Labour Court. If the Labour Court's award according to the petitioners is an exparte award, the present petitioners could have moved before the Labour Court for restoration of the above reference and to get the said reference decided on merits. He has submitted that the petitioners were not present before the Labour Court and have not adduced any evidence and hence, the Labour Court was compelled to pass the impugned award which cannot be challenged in the present petition under Article 227 of the Constitution of India. Mr.Rathod has further submitted that the initial ad-interim relief was granted by this Court staying the award passed by the Labour Court. On 8.2.1993, the Division Bench has passed the order whereby the order with regard to reinstatement was not stayed and with regard to the payment of backwages, this Court had directed that the petitioners may withhold the payment of the amount of backwages as per the direction given by the Labour Court on condition that in case the petitioners lose in the petition and are required to make payment of amount of backwages as per the direction given by the Labour Court or as per the direction that may be given by this Court, the said amount shall be paid to the respondent - workman together with interest at the rate of 12% p.a.. which may be calculated from the date of the award. Mr. Rathod has further submitted that this order was passed by this Court way back on 8.2.1993 and still the present respondents were not reinstated and hence, the respondents were constrained to file Civil Application No.2038 of 2001 and while disposing of the said Civil Application, this Court (Coram: K.M.Mehta, J) has passed an order observing that if the employee desires to report for duty, the employer may employ him pursuant to the order of this Court. As regards other benefits of backwages will depend upon final hearing of the matter.

9. The present respondents have again filed Civil Application No.12093 of 2001 by raising the grievance that pursuant to the earlier order passed in Civil Application No.2038 of 2001, the respondents were reinstated. Thereafter, by an order dated 31.7.2001, the respondent's services were terminated and hence, they were constrained to file the said Civil Application before this Court. However, in the said Civil Application, this Court (Coram: D.H.Waghela, J) passed the order on 11.12.2001 accepting the request to place Civil Application alongwith main matter and accordingly the said Civil Application was listed with the main matter for final hearing.

10. Mr.Rathod has further submitted that the award passed by the Labour Court as well as the interim order passed by this Court on 8.2.1993 was not complied with and the explanation which was given by the present petitioners was only to the effect that the respondents have not approached the petitioners. Mr.Rathod has submitted that this type of contention is not open for the petitioners as it is contrary to the decision of the Honourable Supreme Court in the case of A.P.SRTC Vs. B.Vikram Reddy reported in 2004 Supreme Court Cases (L&S) 83 wherein the Honourable Supreme Court has held that in spite of the award passed on 23.4.1997, the appellant Corporation did not implement the award and the respondent was not reinstated in service. The Court has not considered the explanation of the Corporation to the effect that the respondent never approached the Corporation nor did he take any steps for execution of the award and therefore, the appellant did not reinstate the respondent. It was not considered to be a justifiable stand on the part of the appellant Corporation. In the absence of any material on record to show as to why the Corporation could not implement the award, the respondent is justified in getting full back wages. Mr.Rathod has pointed out that earlier also, the respondent workman was employed by the petitioners for scarcity relief work and for that purpose, he has pointed out the office orders dated 28.4.1987 and 13.8.1987. He has, therefore, submitted that the respondent workman had already completed 240 days and it was rightly considered by the Labour Court.

11. After having heard the Learned Counsels appearing for the respective parties and after having gone through the award passed by the Labour Court as well as the earlier interim orders passed by this Court as well as the order passed in Civil Application, I am of the view that the grievance raised by the present petitioners in

this petition is found to be just and proper. It is an admitted position that while passing the award by the Labour Court, the Labour Court has no where referred to as to how the respondent workman has completed 240 days of service. On the contrary, the Labour Court has ignored the letters written by the petitioners wherein reference regarding 240 days was given. The Labour Court has merely considered the affidavit of the respondent workman and without going into any evidence, straightaway, has come to the conclusion that the respondents-workmen were working with the petitioner organisation and they have completed 240 days prior to their termination and they were not paid any amount of notice pay or retrenchment compensation and hence, the said action was illegal and unlawful and accordingly, the Labour Court has passed the order. It is true that on behalf of the present petitioners, nobody has appeared before the Labour Court and contested the Reference. However, the petitioners have further filed two replies before the Labour Court and the Labour Court has observed that "with regard to the statement of claim made by the respondent workman, no evidence was laid on behalf of the petitioners". The Labour Court has further observed that the present petitioners have not produced any evidence either in writing or oral. The Labour Court has further observed that the present petitioners have not filed any reply to the statement of claim before the Labour Court. This is contrary to the facts on record as admittedly, replies were filed by the present petitioners before the Labour Court which have not been taken into consideration by the Labour Court.

12. Moreover, in the present petition, the petitioners have produced the appointment letters dated 25.3.1988 wherein it is specifically mentioned that since scarcity work was to be undertaken, the respondent workman were appointed purely on temporary basis as work charge clerks and thereafter, the petitioners have also produced the office order dated 18.7.1988 wherein it was mentioned that since the scarcity work was over all work charge clerk who were appointed purely on temporary basis were relieved. Against that order 65 workman were relieved and detailed list was annexed to it. Therefore, it appears from the record that the respondent workman had worked only for four months between the period from 25.3.88 to 18.7.1988. Since this aspect has not been gone into by the Labour Court and without verifying the record and in absence of any evidence, the Labour Court has come to the conclusion that the respondent workman have completed 240 days, is apparently not correct on the face of record.

13. It also appears that the Labour Court has not considered at all as to whether the scarcity work would fall within the ambit of industry as defined under Section 2(j) of the Act. The Labour Court has passed the award on 30.5.1992 and on that date, the judgement of this court in the case of JJ Shrimali (Supra) was very much available and as observed earlier, the Court has held that on completion of scarcity work, if the persons appointed on temporary basis are discharged, they are not entitled to any compensation and they are also not entitled to wages for the period. This aspect was not taken into consideration by the Labour Court. Since the earlier two decisions cited before this Court one of which is of the Division Bench and another one is of the Full Bench, are binding on this court, it is held that since scarcity relief work is not an industry, the respondents are not justified in raising this dispute before the Labour Court. Even otherwise, the respondents have not completed the services for a period of 240 days in the previous year, the Court is of the view that the Labour Court award is not in accordance with the settled legal position. As far as the decision of the Honourable Supreme Court relied upon by Mr.Rathod is concerned, in that decision, the Corporation has not challenged the award and the award has become final and in that connection, the Honourable Supreme Court has observed that the Corporation was not justified in denying full backwages to the workmen. Here, in the present case, the award was very much under challenge before this Court. not only that, initially, the award was stayed as regards to both - reinstatement and backwages. However, the said stay order was modified in February, 1993 whereby the stay against the payment of backwages with certain conditions was continued. It cannot, therefore, be said that the petitioners have not challenged the award. The decision of the Honourable Supreme Court is, therefore, not applicable to the facts of the present case.

14. In view of the above facts and circumstances of the case and in view of the settled legal position narrated hereinabove, the Court is of the view that the Labour Court's award deserves to be quashed and set aside. The petition is accordingly allowed. Rule made absolute with no order as to costs.

15. Since the main petition is allowed, Civil Application No.12093 of 2001 does not survive now and it is accordingly disposed of.

(K.A.Puj, J)

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